IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5445 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAKRAJI NATHAJI DABHI

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner No. 1-2

NOTICE SERVED for Respondent No. 1-2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/06/2002

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India seeking a writ of mandamus against the respondents directing them to release the amount of increments withheld by them and further direction against them not to withheld any of his increments on the ground of non-passing of 'Gujarati' language examination. The petitioners have further prayed for an order from this Court directing the respondent No.1 to exempt the

petitioners from passing the examination with effect from the date of joining in the post along with the other persons who were exempted from the rules of 1970.

2. This petition was admitted on 13th October 1987 and by way of an interim relief, following order was passed by this Court :

"Rule.

Interim relief as prayed for in paragraph 20(D) on condition that,

(i) petitioners shall appear at every Gujarati Language Examination till they pass,

(ii) that the petitioners will restore the amount of increments in salary within three months from the order of the High Court in case the petitioners fail in this petition, and

(iii) the petitioners shall file an undertaking in that behalf within three weeks from today."

3. The notice was duly served on the respondents, however, no one appears on behalf of the respondents till this date.

4. Mr. I.S. Supehia, learned advocate appearing for the petitioners has submitted that pursuant to the order passed by this Court on 13th October 1987, the petitioners have filed their undertaking before this Court on or around 14.10.1987 stating that the petitioners would appear in every lower standard Gujarati language examination and that the petitioners would restore the amount of yearly increments released in their favour within 3 months from the order of the Court in case the petitioners would fail in the present petition. Mr. Supehia, ld. advocate for the petitioners has further submitted that both the petitioners have passed their examination and hence the present petition would not survive now and it would become infructuous. However, the present petition may not be dismissed on the ground of it having become infructuous as in that case the petitioners would be required to restore the amount of increments granted in their favour. Since the petitioners have already passed the examination the yearly increments were granted to the petitioners pursuant to the order passed by this Court. Since the petitioners have passed the examination and they have

retired from service, there is no question of restoring the amount of increments by the petitioners. It is therefore made clear that if the petitioners have already passed the examination in Gujarati language then in that case no recovery should be effected from the petitioners.

5. With these observations, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]